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Case No: 2019/7/MTS

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/11/2020

Before :

MR JUSTICE WILLIAM DAVIS

IN THE MATTER OF ADNAN ARIF

Approved Judgment

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MR JUSTICE WILLIAM DAVIS

**Decision upon a Reference under Section 273 of the
Criminal Justice Act 2003**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am 25th November 2020.

Mr Justice William Davis:

1. Adnan Arif is a British citizen. On 7 April 2008 he was arrested as he was about to board a car ferry at the port of Igoumenitsa in Northern Greece. He was driving his UK registered Audi. Concealed in the car was a large quantity of heroin. He was tried and convicted of possession and transit of the drugs. His appeal against his conviction was dismissed. He was sentenced to life imprisonment. He now has been transferred to this jurisdiction pursuant to a warrant issued by the Secretary of State under the Repatriation of Offenders Act 1984. The Secretary of State has referred Mr Arif's case to this court for the making of an order pursuant to Section 273 of the Criminal Justice Act 2003.
2. The relevant parts of Section 273 of the 2003 Act are as follows:

273 Life prisoners transferred to England and Wales

- (1) The Secretary of State must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.*
- (2) In subsection (1) "transferred life prisoner" means a person—*
 - (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and*
 - (b) who has been transferred to England and Wales after the commencement of this section in pursuance of—*
 -(ii) a warrant issued by the Secretary of State under the [Repatriation of Prisoners Act 1984](#),**there to serve his sentence or sentences or the remainder of his sentence or sentences.*
- (3) In subsection (1) "a relevant order" means—*
 -(b) in any other case, an order under [subsection \(2\)](#) or [\(4\) of section 82A](#) of the Sentencing Act.*

Most cases involving a reference to this court pursuant to Section 273 arise from a life sentence imposed in circumstances in which a mandatory sentence of imprisonment or detention for life would be imposed in this jurisdiction. However, this is not such a case. Consideration of Section 82A of the Sentencing Act 2000 is required. The relevant parts of Section 82A of the 2000 Act are as follows:

82A.— Determination of tariffs.

- (1) This section applies if a court passes a life sentence in circumstances where the sentence is not fixed by law.*
- (2) The court shall, unless it makes an order under subsection (4) below, order that the provisions of [section 28\(5\) to \(8\)](#) of the [Crime \(Sentences\) Act 1997](#) (referred to in this section as the "early release provisions") shall apply to the offender as soon as he has served the part of his sentence which is specified in the order.*
- (3) The part of his sentence shall be such as the court considers appropriate taking into account—*

- (a) *the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;*
- (b) *the effect that the following would have if the court had sentenced the offender to a term of imprisonment—*
 - (i) *[section 240ZA](#) of the [Criminal Justice Act 2003](#) (crediting periods of remand in custody);*
- (c) *the early release provisions as compared with [section 244\(1\)](#) of the [Criminal Justice Act 2003](#).....*

I have not recited Section 82A(4) of the 2000 Act since that refers to cases in which it is appropriate that the early release provisions should not apply. As will become apparent, Mr Arif's case does not fall into that category.

3. Mr Arif was born on 1 April 1973. He is now aged 47. Prior to his arrest in 2008 he had no convictions. The documentation provided by the Greek authorities makes reference to an incident in 2003. Whatever this incident was it did not result in any conviction as recorded by the Police National Computer in this jurisdiction. Mr Arif is a married man who has a daughter aged 13. She was a baby at the time of his arrest.
4. In the spring of 2008 Mr Arif drove from England to Turkey in his Audi car. At some point the car had been adapted so that there was a hidden compartment. This adaptation must have been carried out before Mr Arif travelled to Turkey. In Turkey Mr Arif took possession of 22.566 kilos of heroin in 44 separate packages. The heroin was concealed in the hidden compartment. He then drove from Turkey to the port of Igoumenitsa. He intended to board a ferry bound for Ancona in Northern Italy. It is apparent that the plan then was for him to drive across Italy and France to this country with a view to importing this large quantity of heroin. The plan was foiled when the police stopped him and discovered the heroin.
5. Mr Arif was tried in Corfu. He was convicted. He appealed against his conviction. It appears from the materials supplied by the Greek authorities that the appeal involved at least some rehearing of the evidence. On 22 September 2009 his appeal against conviction was dismissed. The sentence imposed on 22 September 2008 by the first instance court was imprisonment for life. This sentence was affirmed on appeal. The provisions of the Greek penal code permitted Mr Arif to request "conditional dismissal" of the sentence after 15 years. Taking into account credit for time spent on remand prior to sentence, that allowed such a request to be considered on 7 April 2023.
6. The factual basis of the sentence imposed by the Greek court was that Mr Arif's possession of the heroin was "by profession". That meant that the court concluded that Mr Arif was carrying out a professional drug smuggling operation. The court determined that, had he been free to do so, he would have made further drug smuggling trips.
7. In the criminal proceedings in Greece Mr Arif contended that he had not known about the drugs in the hidden compartment. His case was that he had travelled to Turkey for the purpose of trading in clothing. Unsurprisingly these propositions were rejected. It was his car in which the drugs were concealed. He had created the hidden compartment. There was no evidence of any trading in clothing.

8. Mr Arif has made representations in relation to the making of an order under Section 273 of the 2003 Act. He says that he did not receive a fair trial because he was unable to defend himself due to the language barrier. This is contradicted by the fact that he was provided with an interpreter in the Greek proceedings. He also says that the term “by profession” was removed in the course of those proceedings and that he should have been sentenced as a deliverer i.e. a courier. This is contrary to the materials provided by the Greek authorities. Moreover, he would not have received a life sentence had that been the case.
9. My task is to determine the appropriate tariff on what now is to be regarded as a discretionary life sentence in this jurisdiction. The conventional approach is for the court to identify the notional determinate sentence which would have been imposed had a life sentence not been appropriate. The tariff (the point which the early release provisions will apply) will be one half of the notional determinate sentence. That is the approach I must adopt in the unusual circumstances of Mr Arif’s case. I must apply the current sentencing guideline for the equivalent offence in this jurisdiction.
10. The appropriate guideline in relation to Mr Arif’s offending is that relating to fraudulent evasion i.e. drug smuggling. On the findings of the Greek court he had a leading role in the smuggling of over 22 kilos of heroin. The category range for offending by someone in a leading role where the quantity of heroin is 5 kilos of heroin is 12 to 16 years. The guideline provides for sentences of 20 years or more where the smuggling operation is of the most serious kind and involves a quantity of heroin significantly greater than 5 kilos. On the findings of the Greek court Mr Arif was engaged in a sophisticated smuggling operation involving a very large quantity of drugs. A determinate sentence of 20 years would have been justified in his case had he been sentenced in this jurisdiction.
11. It follows that the minimum term to be served before Mr Arif can be subject to the early release provisions will be 10 years. Credit must be given for the entirety of the time he spent in custody in Greece together with such time as he has spent in custody in this jurisdiction since his repatriation. He was in custody in Greece from the date of his arrest i.e. 7 April 2008 and he has remained in custody since his repatriation. Therefore, as at 7 November 2020 he had spent 12 years 7 months in custody for which period full credit must be given against the minimum term to be served. Mr Arif will be entitled to further credit for whatever period he has served by the date of my order pursuant to Section 273 of the 2003 Act. In practical terms the early release provisions will apply forthwith to Mr Arif. When he is actually released will be a matter for the Parole Board.